

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PAMELA DIAL</b>	)	
Claimant	)	
VS.	)	
	)	
<b>RUBBERMAID SPECIALTY PRODUCTS</b>	)	Docket No. 213,256
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent appeals from an Order entered by Administrative Law Judge John D. Clark on January 23, 1997. The Appeals Board heard oral argument on June 4, 1997.

**APPEARANCES**

Claimant appeared by her attorney, Lawrence M. Gurney of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Terry J. Torline of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record presented to the Administrative Law Judge. There were no stipulations relevant to the Order appealed.

**ISSUES**

In an Order dated January 23, 1997, the Administrative Law Judge denied respondent's request to stay all proceedings pending a decision by the Assistant Director on respondent's motion to disqualify claimant's counsel. In this appeal respondent asks the Appeals Board to reverse the decision by the Administrative Law Judge and enter an order staying the effect of the Award entered by the Administrative Law Judge in this case

and staying any further proceedings pending a decision on the motion to disqualify counsel.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Respondent has filed, in this and numerous other cases, a motion to disqualify claimant's counsel and his law firm because claimant's counsel has previously represented respondent in matters which respondent now asserts were the same or were substantially related. The local administrative law judges indicated they would recuse themselves from participation in any disqualification issue. Respondent thereafter filed its motion to disqualify with the Director of Workers Compensation. The motion has been assigned to Assistant Director Brad E. Avery. This case is one of a number of cases involving the same issue. The Assistant Director has set briefing schedules, but as of this date no decision has been rendered on the disqualification question.

Respondent's counsel also filed in this case a motion to stay further proceedings pending a decision on the motion to disqualify. The Administrative Law Judge denied the motion and has since issued an Award. Respondent filed a timely appeal from the decision denying the motion to stay. This appeal involves only the motion to stay. Respondent has also filed an appeal from the Award. The appeal from the Award is scheduled for hearing at a later date. The appeal on the Order denying the motion to stay is considered by the Appeals Board pursuant to K.S.A. 1996 Supp. 44-551 and the directive of the Kansas Court of Appeals in Shain v. Boeing Military Airplanes, 22 Kan. App. 2d 913, 924 P.2d 1280 (1996).

Respondent asks the Appeals Board to stay the effect of the Award entered by the Administrative Law Judge. Claimant argues that, as to this case, disqualification has become a moot issue. The Appeals Board agrees with claimant's argument. The Appeals Board notes that the effect of the Award has been temporarily stayed while it is on appeal. K.S.A. 44-551. More importantly, however, there does not appear any appropriate remedy available through this appeal process. Respondent asserts that counsel's previous representation of respondent Rubbermaid would have allowed counsel to acquire confidential information relevant to this and other workers compensation proceedings. Without intending to express any opinion on the motion to disqualify, the Appeals Board concludes that if claimant's current counsel has acquired confidential information relevant to these proceedings, the consequences for this case cannot, at this stage of the proceedings, be undone. The record has been completed. That record is available to any other counsel who might, in the future, act in representing the claimant. The Appeals Board, therefore, finds and concludes that the issues raised are, as to this case, moot and respondent's request for an order by the Appeals Board staying the Award should be denied.

**AWARD**

**WHEREFORE**, the Appeals Board finds and concludes that the issues raised in this appeal are moot, the appeal is dismissed, and the Order entered by Administrative Law Judge John D. Clark, dated January 23, 1997, remains in effect as originally entered.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:   Lawrence M. Gurney, Wichita, KS  
      Terry J. Torline, Wichita, KS  
      John D. Clark, Administrative Law Judge  
      Philip S. Harness, Director